

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
NEWARK VICINAGE

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Counsel for Defendants Eagle Forum Education & Legal Defense Fund, Edward R. Martin, Jr.,
John F. Schlafly, Eagle Trust Fund, and Estate of Phyllis M. Schlafly

ANDREW L. SCHLAFLY, on Behalf of)
Himself Individually and on Behalf of All)
Other Members of Eagle Forum, a Non-)
Profit Membership Corporation,)
Plaintiff,)

v.)

EAGLE FORUM, EAGLE TRUST FUND,)
ESTATE OF PHYLLIS M. SCHLAFLY,)
EDWARD R. MARTIN, JR., JOHN F.)
SCHLAFLY, AND EAGLE FORUM)
EDUCATION & LEGAL DEFENSE FUND,)
Defendants.)

) CASE No. 2:17-cv-02522-ES-MAH
)
) **STATEMENT OF POSITION PURSUANT**
) **TO ORDER DATED JUNE 18, 2022, OF**
) **DEFENDANTS EAGLE TRUST FUND,**
) **ESTATE OF PHYLLIS M. SCHLAFLY,**
) **JOHN F. SCHLAFLY, EAGLE FORUM**
) **EDUCATION & LEGAL DEFENSE FUND,**
) **AND EDWARD R. MARTIN, JR.**

Pursuant to the Court's June 18, 2022 text order (D.E. No. 279), defendants Eagle Forum Education and Legal Defense Fund, Edward R. Martin, Jr., John F. Schlafly, Eagle Trust Fund, and the Estate of Phyllis M. Schlafly (collectively, the "Eagle Trust Defendants") respectfully state their positions as follows:

1. With respect to the application pending before the Circuit Justice for the Third Circuit, the Eagle Trust Defendants respectfully submit that this Court should await the action of the Circuit Justice on the application to recall and stay the mandate.¹ Although defendant Eagle Forum argues in its opposition that the appeal presents no substantial question, the Eagle Trust Defendants' reply rebuts that argument. Given the hectic end-of-term events at the Supreme Court at this time, the Eagle Trust Defendants respectfully submit that this Court should await the Circuit Justice's action on the stay application before taking final action here.

2. Assuming *arguendo* that the Circuit Justice denies the application to recall and stay the mandate, the Eagle Trust Defendants respectfully submit that this Court should modify the disbursement order (D.E. No. 246) to align it with the Court's decision (D.E. No. 238). Specifically, the Court's decision provides that "Eagle Forum is thus the only beneficiary of the Policies and will take receipt of the proceeds in trust, subject to the temporary restraining order issued in the Madison County action." *Id.* at 10 (citing D.E. No. 224-1 (Madison County Circuit Court Order, dated Oct. 20, 2016) ¶ 14). By contrast, the disbursement order lacks the caveat of taking the funds in trust. *See* D.E. No. 246. The Eagle Trust Defendants aver that Eagle Forum has not appeared to honor another escrow provision of the Madison County Circuit Court Order, dated Oct. 20, 2016, in Paragraph 3 of that order. If this Court will not *sua sponte* revise the disbursement order to align with this Court's decision, the Eagle Trust Defendants reserve the right to move the Court to reconsider the post-appeal disbursement order, now that jurisdiction has returned to this Court.

3. Assuming *arguendo* that the Circuit Justice denies the application to recall and stay the mandate, the Eagle Trust Defendants respectfully submit that the Third Circuit's reversal of this Court's holding that this Court lacked subject-matter jurisdiction coupled with the waiver of personal jurisdiction inherent in Eagle Forum's availing itself of this forum to seek damages against the Eagle Trust Defendants makes the dismissal of this action susceptible to a motion for reconsideration, now that jurisdiction has returned to this Court and the Third Circuit's decision on the question of subject-matter jurisdiction appears final. The Third Circuit could have—but did not—reach the question of whether Eagle Forum's post-appeal, post-judgment motion waived personal jurisdiction. Under *Standard Oil Co. v. United States*, 429 U.S. 17, 18-19 (1976), the Third Circuit's mandate has no bearing on this Court's authority to hear a motion for reconsideration:

Like the original district court judgment, the appellate mandate relates to the record and issues then before the court, and does not

¹ The parties' filings are online on the Supreme Court's website: <https://www.supremecourt.gov/search.aspx?filename=/docket/DocketFiles/html/Public/21A839.html> (last visited June 21, 2022)

purport to deal with possible later events. Hence, the district judge is not flouting the mandate by acting on the motion.

Id. The Eagle Trust Defendants reserve the right to move the Court to reconsider Eagle Forum's post-judgment, post-appeal waiver of personal jurisdiction, now that jurisdiction has returned to this Court.

The Eagle Trust Defendants respectfully submit that this Court should convene a status conference—either itself or through the assigned Magistrate Judge—to address any post-appeal proceedings.

Dated: June 21, 2022

Respectfully submitted,

Scirocco Law, PC
Attorneys for Defendants Edward R. Martin, Jr.,
John F. Schlafly, Eagle Forum Education &
Legal Defense Fund, Eagle Trust Fund, and
Estate of Phyllis M. Schlafly

/s/ Mark R. Scirocco

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ANDREW L. SCHLAFLY, on Behalf of)	
Himself Individually and on Behalf of All)	CASE No. 2:17-cv-02522-ES-MAH
Other Members of Eagle Forum, a Non-)	
Profit Membership Corporation,)	CERTIFICATE OF SERVICE
Plaintiff,)	
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v.)	
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EAGLE FORUM, EAGLE TRUST FUND,)	
ESTATE OF PHYLLIS M. SCHLAFLY,)	
EDWARD R. MARTIN, JR., JOHN F.)	
SCHLAFLY, AND EAGLE FORUM)	
EDUCATION & LEGAL DEFENSE)	
FUND,)	
)	
Defendants.)	
)	
)	

I, Mark R. Scirocco, counsel for defendants Eagle Forum Education and Legal Defense Fund, Edward R. Martin, Jr., John F. Schlafly, Eagle Trust Fund, and Estate of Phyllis M. Schlafly, do certify that on June 21, 2022, I electronically filed the accompanying document with the Court using the Electronic Case Filing system, which I understand to have caused electronic service on counsel for all the parties in this matter.

Dated: June 21, 2022

Respectfully submitted,

Scirocco Law, PC
Attorneys for Defendants Edward R. Martin, Jr.,
John F. Schlafly, Eagle Forum Education &
Legal Defense Fund, Eagle Trust Fund, and
Estate of Phyllis M. Schlafly

/s/ Mark R. Scirocco

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